

RECEIVED
CENTRAL FAX CENTER

JUL 01 2010

REMARKS

Applicant provisionally elects Species I and traverses the requirement for restriction. Claims 1-7 are elected as reading on the elected Species I. Claim 1 is generic.

The inventions as described in the claims are neither independent nor distinct. In fact, the inventions as claimed arise from the same inventive effort. Where inventions are neither independent nor distinct, restrictions should not be required. Where inventions arise from the same inventive effort, restriction should not be required. See MPEP 802.

MPEP 802.01 points out that a sub-combination and a combination are not independent inventions, and that a process and an apparatus used in the practice of the process are not independent inventions. That same section points out that independent means that there is no disclosed relationship between the subjects disclosed.

The examiner has not made any requirement based on the subject matter being independent. Therefore it is understood that the examiner concedes that the subject matter is not independent.

The examiner's requirement for restriction is based upon his holding that the subjects are distinct. That is, as pointed out in Section 802.01, the examiner has held that the subject matter as claimed:

are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER.

The examiner has held under Section 803 that the claimed inventions: are able to support separate patents and they are ... distinct (MPEP Section 806.05-806.05(i)).

However, Section 803 unequivocally states:
If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

So that Section 803 makes its point clearly, the serious burden requirement is repeated under the title:

CRITERIA FOR RESTRICTION BETWEEN
PATENTABLY DISTINCT INVENTIONS

Section 803 goes on to state that there are two criteria for a restriction requirement: one, that the inventions must be distinct as claimed; and two, that there must be a serious burden on the examiner if restriction were not required.

Section 803 goes on to state under GUIDELINES that an examiner must provide reasons and/or examples to support conclusions. The examiner has never stated that there would be a serious burden on the examiner if restriction were not required. Indeed, there should be no serious burden on the examiner.

The subclasses the examiner has cited are all close together and are all within the subclasses which the examiner regularly searches, and all require searching. Indeed, it would not be unreasonable for the examiner to search three subclasses that were close together. Therefore, restriction should not be required.

The inventions of Species I, II, III and IV are not different combinations in that they do not have "different modes of operation" as required by 806.04. Moreover, where inventions are related as disclosed but are not distinct as claimed, restriction is never proper (MPEP 806). The inventions are not distinct as claimed. Moreover, there is no serious burden on the examiner because all of the subclasses and all of the inventions as claimed should be checked in subclasses noted.

MPEP 806 provides that if the inventions are not distinct as claimed, restriction is never proper. Moreover, Section 806.05(h) emphasizes "as claimed" and falls under the cautions of 806 and 806.05, both of which state, "where the inventions are related as disclosed but are not distinct as claimed, restriction is never proper".

In addition, in the present case the particular criteria and guidelines of 803 must be followed in that there must be a serious burden on the examiner if restriction were not required. In the present case, all of the groups must be searched in all of the subclasses which the examiner has pointed out. All are properly classified and searched together, and the search for one group would not be complete without searching all of the subclasses that the examiner has pointed out.

There should be no hardship on the examiner to complete examination for all groups, because the same structural installation is required in all groups. The Examiner simply states that the different Species fall in different classes/subclasses but has not provided any evidence to support such a contention.

The examiner has not adequately considered and compared the apparatus as claimed and the process as claimed.

It is impossible that (1) the process as claimed can be practiced by hand or by another and materially different apparatus than the apparatus as claimed.

The claims are different expressions of the single invention, and are neither independent nor distinct.

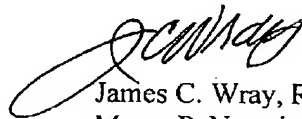
RECEIVED
CENTRAL FAX CENTER

JUL 01 2010

CONCLUSION

Reconsideration and allowance of the application are requested. Reconsideration and withdrawal of the restriction requirement are requested.

Respectfully,



James C. Wray, Reg. No. 22,693
Meera P. Narasimhan, Reg. No. 40,252
1493 Chain Bridge Road
Suite 300
McLean, Virginia 22101
Tel: (703) 442-4800
Fax: (703) 448-7397

July 1, 2010